

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

EASTPOINTE CONDOMINIUM ASSOCIATION

Employer

And

Case 22-RC-260827

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 68, 68A, 68B, 68C, 68D, AFL-
CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Eastpointe Condominium Association (the Employer) is engaged in the business of providing residential housing, maintenance and concierge services. International Union of Operating Engineers Local 68, 68A, 68B, 68C, 68D, AFL-CIO (the Petitioner) seeks to represent the following bargaining unit:

All full-time and regular part-time maintenance technicians, senior maintenance technicians, cleaners, and concierge employees employed by the Employer at its 1 Scenic Drive, Highlands, New Jersey location, but excluding all office clerical employees, professional employees, technical employees, guards, and supervisors as defined in the Act, and all other employees.

The parties stipulate, and I find, that this unit is appropriate.

No issues were litigated at the hearing.¹

The Petitioner suggests that the election should be held via mail ballot for the safety of all concerned during the COVID-19 pandemic; the Employer has stated its willingness to defer to the Regional Director regarding the method of election.

¹ The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held by teleconference before Hearing Officer Henry Powell of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers Local 68, 68A, 68B, 68C, 68D, AFL-CIO.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On **Friday, June 26, 2020**, ballots will be mailed to voters by National Labor Relations Board, Region 22. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 22 office by close of business on **July 17, 2020**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **July 6, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 22 Office at (862) 229-7065 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually on a date to be determined by the Regional Director, during the period **from July 31, 2020 through August 7, 2020**. The Region will provide notice to the parties of the scheduled date for the count at least 24 hours prior to the count. For the same reasons, the count will take place virtually on a platform (such as Skype, WebEx, etc.) to be determined by the Regional Director. The Parties further agree that each party will be allowed to have one observer attend the virtual ballot count. Each party will be allowed to have one observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Sunday, June 14, 2020**, the payroll period immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well

as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, June 19, 2020**, two business days after date of issuance of this Decision and Direction of Election. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the

failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed **no later than 12:01 a.m. on JUNE 23, 2020.** If the Employer does not receive copies of the notice by June 19, 2020, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English and Spanish, please notify the Board agent immediately if that is necessary for this election. Also, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: June 17, 2020

A handwritten signature in black ink, reading "David E. Leach III". The signature is written in a cursive style with a large initial "D" and a stylized "L".

DAVID E. LEACH III
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
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